

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8670 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIP BAOL AMARSINH RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR BC DAVE for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 20/10/1996 passed by the Commissioner of Police, Vadodara city under the provisions of sub-section (2) of section-3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to the 'PASA Act, 1985').

2. It is contended by the learned counsel for the

petitioner that his wife made a representation dated 5/11/96 by Registered A.D. to the Hon'ble Home Minister, but the same representation has not yet been considered. In view of this, the rights of the petitioner guaranteed under Article 22(5) of the Constitution of India is violated and the petitioner's continued detention is therefore illegal.

3. Mr Raj Gopal, Deputy Secretary (Home), Gandhinagar has filed affidavit stating that the representation dated 5/11/96 addressed to the Hon'ble Minister was received by Home Department through the office of the Hon'ble Chief Minister on 22/11/96, as 22nd, 23rd, 24th and 25th days of November 1996 were public holidays. The detinue was informed of the decision under the Department's communication dated 27/11/1996 through jail authorities.

4. With respect to time gap between 5/11/96 to 22/11/96, an affidavit has been filed by Mr.D.H.Oza, Deputy Secretary to Government of Gujarat, Office of the Chief Minister, Sachivalaya, Gandhinagar, stating that the representation dated 5/11/96 was received in the office of the Chief Minister, but as there were many applications received from so many people and due to the shortage of the staff at the initial stage, the office of the Chief Minister could not dispose of the representation in time. It is stated that the representation was sent to the Home Department on 21/11/96.

5. Having read the affidavit of Mr Raj Gopal, Deputy Secretary, Home Department and that of Mr D.H.Oza, Deputy Secretary to Government of Gujarat, I am satisfied that the delay during the period 5/11/1996 to 22/11/1996 has not been satisfactorily explained. The representation of the petitioner remained pending and unattended in the office of the Chief Minister for a period more than 15 days. The petitioner has been deprived of his liberty on account of the casual approach shown by the office of the Chief Minister and thus, there is a violation of the rights of the petitioner guaranteed under Article 22(5) of the Constitution of India. The violation of the mandatory provisions of the Constitution had made the impugned order of detention illegal and as such, the same is not sustainable.

6. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention is quashed and set aside. The petitioner shall be released forthwith, if he is not required in any other

case. Rule is made absolute accordingly.

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